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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,728	08/04/2003	James M. Cleland	CLELS.64850	5581
27629	7590	01/10/2006	EXAMINER	
FULWIDER PATTON LEE & UTECHT, LLP 200 OCEANGATE, SUITE 1550 LONG BEACH, CA 90802			FORD, JOHN K	
			ART UNIT	PAPER NUMBER
			3753	
DATE MAILED: 01/10/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,728

Applicant(s)

CLELAND, JAMES M.

Examiner

John K. Ford

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Oct 3, 2005
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 7-11 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5, 13 is/are allowed.
- 6) ☒ Claim(s) 6, 12, 14 is/are rejected.
- 7) ☒ Claim(s) 6, 14 is/are objected to (if minor 35 USC 112 problem cured)
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/4/05 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/28/04 + 8/4/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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Applicant's response of October 3, 2005 has been studied carefully. Applicant has elected, without traverse, the invention of Group I, claims 1-6 and 12-14. Accordingly, claims 7-11 are withdrawn from consideration.

The Examiner is requesting that applicant send in a copy of WO 97/10171 dated 03/20/97 and listed on applicant's PTO -1449 form. The examiner has been unable to locate the file copy in the electronic file. As well, please provide a copy of the Chapter I report for PCT/US03/35661 that apparently corresponds to the current application.

Please note the following claim informality: "conducting" is misspelled in claim 2, line 2.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Near the end of both of claims 6 and 14 of the preliminary amendment filed November 13, 2005, applicant refers to a "consolidating valve" (three times in each of these claims). The Examiner would suggest changing "valve" to - - fitting - - at each of

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these six occurrences. By disclosure there is no valve in the consolidating fitting and hence the use of the word valve to describe this structure is something of a misnomer.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Frank (USP 2,009,883) and Hall (USP 2,188,506)

Applicant is referred to the discussion in MPEP 2114 for a discussion of why, in an apparatus claim, the material intended to be conditioned does not impart patentability to the apparatus. See in particular, Ex parte Masham, 2 USPQ2d 1647 (BPAI 1987). The fact that applicant claims a "beverage conducting conduit" does not distinguish the claim from prior art that shows a fluid conducting conduit, denoted as a "flue" in Frank.

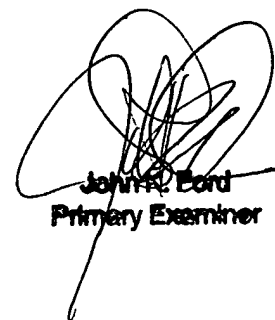
Figure 5 of Frank teaches a superheater formed of four parallel tubes (two sets 15 and 16) that are joined together at opposite ends by a first set of Y-connectors. A further set of Y-connectors connects the aforementioned first set of Y-connectors to inlet and outlet pipes that exit the flue at the right-hand side of Figure 5. The flue (2), not labeled in Figure 5 (but shown in Figure 1), which is deemed to be the "beverage

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conducting conduit" (see discussion immediately above) does not have a "reciprocating pattern". Instead, the flow of flue gases through the flue is more or less straight across horizontally. Hall teaches a superheater 12 that has a series of baffles 36 that forces the flue gases to move in a reciprocating pattern between entrance 33 and exit 37. To have arranged such baffles and the flue in Figure 5 of Frank to force the flue gasses to flow in a zig-zag pattern over the surfaces of at least the pipes 15 and 16 of Frank to increase the efficiency of the heat recovery of the device (by increasing the amount of time that the gasses are in contact with the exterior of the pipes in Frank) would have been obvious to one of ordinary skill in the art.

Claims 1-6, 13 and 14 are otherwise in condition for allowance, but for the informalities note above and the 35 USC 112, second paragraph, problem noted above.

Any inquiry concerning this communication should be directed to John K. Ford at telephone number 571-272-4911.



John K. Ford
Primary Examiner